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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
Hennepin Road District,)
County of Putnam, Illinois,)
)
Petitioner)
)
vs.) No. T09-0037
)
ArcelorMittal USA,)
)
Respondent)
)
Petition for approval of the)
relocation of ESK Road)
located in Hennepin)
Township, Putnam County,)
Illinois)

Chicago, Illinois

July 7, 2009

Met, pursuant to notice, at 10:00 o'clock a.m.

BEFORE:

MR. DEAN JACKSON
Administrative Law Judge

1 APPEARANCES :

2

3 MR. BRIAN MC CARTHY
4 1 South Dearborn Street
5 19th Floor
6 Chicago, Illinois 60603
7 for ArcelorMittal Hennepin

8

9 MR. NEIL F. FLYNN
10 1035 South 2nd Street
11 Springfield, IL 62704
12 for the respondent
13 Norfolk Southern Railway Company

14

15 MS. GLORIA CAMARENA
16 and
17 MR. JASON JOHNSON
18 100 West Randolph Street
19 Chicago, Illinois 60606
20 for Illinois Department of
21 Transportation

22

23 MR. AARON TOLIVER
24 Rail Safety Specialist
25 527 East Capitol Avenue
26 Springfield, Illinois 62701
27 for staff of the
28 Illinois Commerce Commission

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33 SULLIVAN REPORTING COMPANY, by
34 Leah Ann Bezin, CSR
35 License No. 084-001104

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1 JUDGE JACKSON: Pursuant to the authority
2 vested in me by the State of Illinois, I'll call
3 Docket No. T09-0037 for hearing.

4 It's a petition filed by Hennepin
5 Road District, Putnam County, Illinois, that
6 involves Norfolk Southern and others who I will
7 not make attempt to pronounce.

8 May I have appearances, please.

9 Petitioner.

10 MR. MC CARTHY: Petitioner -- this is
11 Brian McCarthy. I'm actually an attorney for the
12 respondent.

13 And I apologize for my casual
14 dress. It --

15 JUDGE JACKSON: That's all right.

16 MR. MC CARTHY: -- completely slipped my
17 mind about the hearing this morning until it
18 popped up on my schedule. And so. . .

19 But I spoke with the petitioner on
20 the phone yesterday, or attorney for petitioner,
21 Christine Judd. We have worked out an agreement
22 in principle. They have actually executed it.

1 We haven't had time to execute it. It hasn't
2 gotten to us yet to execute it.

3 But it's sort of a short and sweet
4 agreement. I don't know whether other people
5 want to see it. I believe she said she faxed it
6 to Aaron Toliver and Rebecca at the judge's
7 office, she said. But she --

8 JUDGE JACKSON: All right. I'll tell you
9 what, before we get into the nuts and bolts --

10 MR. MC CARTHY: Oh, okay. Sorry.

11 JUDGE JACKSON: No. That's fine.

12 Why don't you give us, for the
13 record -- well, note for the record that
14 Christine Judd, for petitioner, is not with us
15 today.

16 And why don't you give us your
17 name, address --

18 MR. MC CARTHY: Yes.

19 JUDGE JACKSON: -- and phone number and who
20 you are representing.

21 MR. MC CARTHY: Okay. Okay.

22 Brian McCarthy for

1 ArcelorMittal Hennepin, Inc. 1 South Dearborn,
2 19th Floor, Chicago, Illinois 60603. My phone
3 number is (312) 899-3771. And my email is
4 brian.mccarthy@arcelormittal.com.

5 JUDGE JACKSON: Thank you. That will do for
6 now.

7 Let's go to the Norfolk Southern.

8 MR. NEIL FLYNN: Your Honor, for the record,
9 my name is a Neil F. Flynn. My business address
10 is 1035 South 2nd Street, Springfield, Illinois,
11 62704.

12 I'm an attorney licensed to
13 practice law in the State of Illinois. I'm
14 appearing on behalf of the respondent, Norfolk
15 Southern Railway Company.

16 JUDGE JACKSON: Thank you.

17 IDOT.

18 MR. JOHNSON: Yes. My name is --

19 MS. CAMARENA: Good morning.

20 MR. JOHNSON: Go ahead.

21 MS. CAMARENA: Go ahead.

22 JUDGE JACKSON: Looks like we have two IDOT

1 folks, one in Chicago and one in Springfield.

2 Who wants to go first?

3 MR. JOHNSON: She can go ahead. She is the
4 attorney.

5 JUDGE JACKSON: The attorney always gets to
6 go first.

7 MS. CAMARENA: Oh, thank you.

8 Good morning.

9 Gloria Camarena, Illinois
10 Department of Transportation, Assistant Chief
11 Counsel. 100 West Randolph, 6th Floor. My phone
12 number is (312) 793-2965.

13 JUDGE JACKSON: And we have Jason Johnson,
14 Ms. Camarena, here in Springfield with us.

15 MS. CAMARENA: Yes.

16 JUDGE JACKSON: And staff. Commission
17 staff.

18 MR. TOLIVER: Aaron Toliver, Rail Safety
19 Specialist, staff of the Commission. 527 East
20 Capitol Avenue, Springfield, Illinois, 62701.
21 Phone number, (217) 785-8420.

22 JUDGE JACKSON: All right.

1 We have an amended petition that's
2 been filed.

3 I believe, Mr. McCarthy, that was
4 just to correct the spelling in your client's
5 name; is that correct?

6 MR. MC CARTHY: I believe that, and I
7 thought there were some other spelling changes.
8 But. . .

9 JUDGE JACKSON: It also added, I believe,
10 the Illinois Department of Transportation and
11 Norfolk Southern as parties. The --

12 MR. MC CARTHY: I think it also removed a
13 provision -- from what I recall, it removed a
14 provision for the Illinois Commerce Commission to
15 assign the cost to ArcelorMittal for the move.

16 JUDGE JACKSON: Ah-ha. Okay.

17 MR. TOLIVER: And it also requests that the
18 crossing be granted an exempt status as well.

19 JUDGE JACKSON: All right. The amended
20 petition did?

21 MR. TOLIVER: Yeah. Or it just removed the
22 reference to exempt crossing.

1 JUDGE JACKSON: Okay.

2 Here is what we are going to do:

3 Mr. Toliver, have you been working
4 on an agreed order with these folks?

5 MR. TOLIVER: Yes.

6 JUDGE JACKSON: Well, then I would give the
7 floor to Mr. Toliver to give us, from staff's
8 perspective, a brief summary of the project.

9 MR. TOLIVER: Okay.

10 The project is located at ESK Road
11 in -- near Hennepin in Putnam County. It is a
12 township roadway. Hennepin Township Road
13 District has jurisdiction over the roadway. It
14 runs north and south. And there is an existing
15 railroad crossing which we identify in our -- in
16 our crossing inventory as 533407N.

17 That is an existing crossing that
18 is being requested to relocate approximately 200
19 feet to the west of its current location. It
20 currently has crossbuck warning signs.

21 The petitioner requested to make
22 the relocation in order to straighten the

1 roadway, the ESK roadway, and improve the surface
2 to a hot mix asphalt from its current oil and
3 chip surface.

4 And they stated that it was also in
5 the interest of public safety for the purpose of
6 improving the crossing angle at the crossing and
7 the lines of sight, I believe they said
8 especially for northbound traffic.

9 So it's a relocation of an existing
10 railroad crossing.

11 JUDGE JACKSON: And, Mr. McCarthy, your
12 client has no objections to the petition; is that
13 correct?

14 MR. MC CARTHY: That is correct, yeah.

15 We just wanted, you know, to
16 document it and make sure the cost remained with
17 the township roadway.

18 JUDGE JACKSON: All right.

19 Mr. Flynn, where does Norfolk
20 Southern Railway Company sit?

21 MR. NEIL FLYNN: Your Honor, the only reason
22 Norfolk was named as a party is really based upon

1 confusion. And the confusion is whether or not
2 the crossing is or was, at one time, Norfolk
3 Southern's track. And part of the confusion, as
4 I understand it, is an apparent discrepancy in
5 the FRA inventory which suggests incorrectly that
6 it is -- that the track that will cross the
7 proposed new roadway is Norfolk Southern track.

8 It is not Norfolk Southern track.

9 JUDGE JACKSON: But it ties into Norfolk
10 Southern track?

11 MR. NEIL FLYNN: That is correct.

12 JUDGE JACKSON: Okay.

13 But the location of the crossing is
14 not -- the rail there is not owned by Norfolk
15 Southern?

16 MR. NEIL FLYNN: That is correct, your
17 Honor.

18 JUDGE JACKSON: So you don't even need to be
19 here other than to make sure that you don't get
20 stuck with anything.

21 MR. NEIL FLYNN: That's correct as well,
22 your Honor.

1 And we did talk with staff and the
2 other parties beforehand, and it certainly is our
3 intention to and we will work with all parties to
4 make sure that the inventory is corrected to
5 accurately reflect the facts.

6 JUDGE JACKSON: All right.

7 So Norfolk Southern has no
8 objections to an order granting the amended
9 petition?

10 MR. NEIL FLYNN: That is correct.

11 JUDGE JACKSON: All right.

12 Well, we will leave you in, then,
13 just to make sure we don't hit you with the cost
14 of the project.

15 IDOT, where do you stand and why
16 are you here?

17 Ms. Camarena? Or do you want
18 Mr. Johnson to answer?

19 MS. CAMARENA: Yeah, he can go ahead and
20 answer if he'd like. I will chime in.

21 JUDGE JACKSON: Okay.

22 MR. JOHNSON: We were basically part of the

1 proof of service.

2 I don't think we were originally
3 named as a respondent. But, as you mentioned --

4 MS. CAMARENA: We weren't.

5 MR. JOHNSON: -- the amended petition asked
6 that IDOT be named as a respondent. But we were
7 in the proof of service, and we also sat in on a
8 teleconference a couple of months ago talking
9 about the issues.

10 So to protect the interests of
11 IDOT, we are here today.

12 JUDGE JACKSON: All right.

13 MR. JOHNSON: And I think we are
14 basically -- our position is the same as that of
15 ICC staff.

16 JUDGE JACKSON: No objections?

17 MR. JOHNSON: Correct.

18 JUDGE JACKSON: All right.

19 Mr. Toliver, what's the approximate
20 cost of the crossing work?

21 MR. TOLIVER: That's another issue.

22 In the original petition, it

1 referenced an Exhibit B that I don't think
2 matched up with -- there was no cost estimate
3 provided in the Exhibit B. So at this point, I
4 don't have that information. I need to acquire
5 it from the petitioner.

6 JUDGE JACKSON: All right.

7 MR. TOLIVER: However, there are no grade
8 crossing protection funds being requested for the
9 project.

10 JUDGE JACKSON: Good. That would have been
11 my next question.

12 And my follow-up question to that
13 would be for petitioner. And maybe someone here
14 knows.

15 Is the Hennepin Road District going
16 to foot the bill for the entire project?

17 MR. MC CARTHY: My understanding is yes;
18 that is, if you read the agreement, the proposed
19 agreement between the parties, that's -- it
20 provides that -- this is Brian McCarthy, again,
21 for ArcelorMittal Hennepin -- it says the cost of
22 the aforesaid change shall be paid by Hennepin

1 Road District, county of Putnam, Illinois,
2 including specifically approach pavement,
3 railroad crossing signs, crossing material,
4 pavement markings and advanced warning signs.
5 We, ArcelorMittal Hennepin, agrees to maintain,
6 repair and replace the railroad crossing signs as
7 needed after the relocation.

8 JUDGE JACKSON: All right. Good.

9 Well, there being no objections to
10 the relief requested in the petition and the
11 amended petition, and there appearing to be
12 additional work that needs to be done on the
13 agreement, this is what we are going to do:

14 I'm going to continue the case for
15 60 days, allow the parties to finalize the
16 agreement, to provide us with some cost estimates
17 to Mr. Toliver, staff, and involve Mr. Toliver to
18 assist in preparing a draft order for entry by
19 the Commission separate and apart and in addition
20 to whatever agreements the parties are going to
21 enter into amongst themselves.

22 Then if, say, in 30 days everything

1 is finished, all the agreements and the draft
2 agreed order, then I'll just cancel that hearing
3 and mark the record heard and taken.

4 I would ask everyone's indulgence
5 to approve Mr. Toliver e-mailing me a Word copy
6 of whatever agreed order comes out so that I can
7 then place it in final form for the Commission to
8 enter.

9 How would that -- how does that
10 sound?

11 Mr. McCarthy?

12 MR. MC CARTHY: That is fine.

13 JUDGE JACKSON: Sounds good.

14 Mr. Flynn?

15 MR. NEIL FLYNN: Yes, your Honor, that is
16 acceptable.

17 JUDGE JACKSON: Ms. Camarena?

18 MS. CAMARENA: That's fine.

19 JUDGE JACKSON: Jason -- or Mr. Toliver?

20 MR. TOLIVER: No objections by staff.

21 JUDGE JACKSON: Okay.

22 Then that's what we will do.

1 Let's jump off the record, pick a
2 date, and then we will jump back on.

3 Off the record.

4 (Whereupon, a discussion was
5 had off the record.)

6 JUDGE JACKSON: Back on the record.

7 Mr. Toliver, staff, you have an
8 issue?

9 MR. TOLIVER: All right.

10 I'd like to make a request that the
11 review and approval of the agreed order be
12 expedited as much as possible by all parties as
13 there is a related but -- a related case, I
14 guess, in a way.

15 There is a crossing that's only
16 about 500 feet north of here that's already under
17 ICC order that's partially complete, that Marquis
18 Energy spur into their plant.

19 But the final roadway alignment was
20 ordered to be completed by December 31st of 2009
21 in the final order of the Commission. And I just
22 wanted to --

1 JUDGE JACKSON: What docket number is that?

2 MR. TOLIVER: That's T07-0015.

3 JUDGE JACKSON: That's an ethanol plant
4 case, isn't it?

5 MR. TOLIVER: Yes.

6 JUDGE JACKSON: Yes. Pretty big operation.

7 MR. TOLIVER: Yeah.

8 The signals are in according to the
9 ICC order, in compliance with the order, but the
10 final roadway alignment can't be completed until
11 this. I think this case kind of has a bearing on
12 whether or not roadway alignment can occur.

13 So . . .

14 MR. MC CARTHY: Okay.

15 Yeah, I don't see any --

16 JUDGE JACKSON: Yeah.

17 MR. MC CARTHY: I don't see any reason why
18 it should take too long.

19 And I'll mention it to the
20 petitioner to see if she can, you know --

21 JUDGE JACKSON: Good.

22 MR. MC CARTHY: -- work with Aaron and us

1 just to come up with some simple agreed order.

2 JUDGE JACKSON: All right.

3 And, Mr. McCarthy, if you could
4 keep Mr. Toliver abreast of how things go with
5 your agreement and -- so that he may then
6 ultimately put the -- put together an agreed
7 order.

8 And we certainly want to be able to
9 say in that agreed order that everybody has taken
10 a look at the draft and agrees to the agreed
11 order.

12 Fair enough?

13 MR. TOLIVER: Yes.

14 MR. NEIL FLYNN: Absolutely.

15 MS. CAMARENA: Yes.

16 JUDGE JACKSON: All right. Wonderful.
17 Okay.

18 Then we are continued to September
19 11, 2009, on a Friday, in these audio/video rooms
20 at 10:00 a.m. in the morning.

21 Notice will go out.

22 But I mentioned earlier, if

1 everything is done prior to that date, I will
2 mark the record heard and taken, cancel the
3 hearing, and we will have Mr. Toliver let
4 everyone know, and you'll see the order on the
5 bench session, whatever date that might be.

6 Anything else, anyone?

7 (No response.)

8 MR. TOLIVER: Nothing, your Honor.

9 MR. MC CARTHY: No.

10 JUDGE JACKSON: Hearing nothing, we are
11 continued.

12 Thanks, everyone.

13 (Whereupon, the above-entitled
14 matter was continued to
15 September 11, 2009, A.D., at
16 10:00 o'clock a.m.)

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